

WP(C) 3808/2006
BEFORE

THE HON'BLE JUSTICE SMT. A. HAZARIKA
WP(C) No.3808/2006
Sri Rajesh Bhakat,
Son of Trinesh Chandra Bhakat,
Resident of Vill-Koimari, Part-VI,
PO-Koimari,
PS- Golakganj,
Dist-Dhubri, Assam.

&.PETITIONER
-Versus-

1. The State of Assam,
Through its Secretary to the Government of Assam,
Transport Department. Dispur, Guwahati-6.
2. The Principal Secretary to the Government
of Assam, Transport Department.
Dispur, Guwahati-6.
3. The Commissioner and Secretary to the
Government of Assam, Transport Department.
Dispur, Guwahati-6.
4. The Director Inland Water Transport,
Guwahati-7, Assam.
5. The Deputy Commissioner, Dhubri,
District-Dhubri, Assam.
6. The Commercial Officer,
Inland Water Transport, Commercial
Service, Goalpara.
7. Agamoni Anchalik Panchayat,
Represented by its Chairman/ President.
8. The Executive Officer,
Agamoni Anchalik Panchayat.
9. Sri Rampirit Rabidas,
Ezradar, Simlabari, Parghat,
Agomani, Dist-Dhubri, Assam.

&.RESPONDE

NTS

B E F O R E

THE HON'BLE SMT. JUSTICE A. HAZARIKA

For the petitioner
Mr. S. Neogi,

: Mr. A.M. Buzarbaruah,
Advocates.

For the respondents
Advocate for Respondent No.9
Mr. AK Bhuyan, Standing
Counsel, Transport Dept., for
Respondent Nos.1, 2, 3, 4 & 6.
Ms. R. Chakraborty,
Additional Sr. Govt. Advocate
for Respondent Nos.7 and 8.
Mr. PK Mushahary, Sr. Govt.
Advocate, Assam, for
Respondent No.5.

: Mr. AR Sikdar,

Date of hearing &
judgment

: 22.05.2007

JUDGMENT AND ORDER (ORAL)

Heard Mr. A.M. Buzarbaruah, learned counsel appearing for the writ petitioner. Also heard Mr. A.K. Bhuyan, learned Standing Counsel, Transport Department, appearing for Respondent Nos. 1, 2, 3, 4 and 6, Mr. P.K. Mushahary, learned Sr. Govt. Advocate, appearing for Respondent No.5, Ms. R. Chakraborty, learned Additional Sr. Govt. Advocate appearing for Respondent Nos.7 and 8 and Mr. A.R. Sikdar, learned counsel appearing for Respondent No.9.

2. The writ petitioner calls in question the legality of the order dated 26.7.06 issued by the Director, Inland Water Transport Department, Government of Assam, (IWTd for short) whereby the settlement order of Simlabari Ferry Ghat dated 17.6.06 made in favour of the petitioner has been cancelled in pursuance of the communication dated 17.7.06 issued by the Deputy Commissioner, Dhubri requesting to cancel the settlement of Ferry Ghat made in favour of the writ petitioner, in view of the settlement of the same Ferry Ghat by the Agamoni Anchalik Panchayat in favour of Sri Rampirit Rabidas, who has been arrayed as party Respondent No.9 in the writ petition. The cause of such communication dated 17.7.06 issued by the Deputy Commissioner, Dhubri rests on the following points:

a) That the settlement made in favour of the writ petitioner vide letter dated 17.6.06 at an amount of Rs.18,000/- (Rupees eighteen thousand only) is less than the amount fixed by Agamoni Anchalik Panchayat which was the outcome of tender process and the highest bidder of the said Ferry Ghat was the respondent No.9 who had quoted an amount of Rs.99,999.99/- (Rupees Ninety nine thousand, nine hundred and ninety nine and ninety nine paise) for the same Ferry Ghat.

b) The said Ferry Ghat had been settled by the Agamoni Anchalik Panchayat from long before and it is not known as to whether the settlement made by the Director, IWTd in favour of the writ petitioner was through the tender process/by following the tender process.

3. Background facts as projected by the writ petitioner in a nutshell are as follows:

On 1.6.06 the writ petitioner had submitted an application to the Director, IWTd, Assam praying for settlement of the Simlabari Ferry Ghat. The said application submitted by the writ petitioner was considered by Respondent No.4 and on 17.6.06 issued a communication to the writ petitioner allowing him to operate the Simlabari Parghat Commercial Cargo cum Passengers Service at an amount of Rs.18,000/- for a period of one year only with a direction to deposit the amount within seven days and for executing the lease agreement failure of which

the prayer so made would automatically be cancelled (Annexure-I to the writ petition).

4. In pursuance to the aforesaid communication, the writ petitioner executed the lease agreement on 17.6.06 and the amount so fixed for the settlement was deposited on the same date and accordingly the Simlabari Parghat Commercial Cargo cum Passengers Service was handed over to the petitioner on 20.6.06 (Annexures-2, 3 and 4 to the writ petition)

5. The settlement of the Simlabari Parghat Ferry Service was operating from Simlabari ghat to Kumarganj ghat over the Gangadhar River for which the respondent No.4 has conveyed the settlement on 17.6.06 in favour of the writ petitioner which has been cancelled on 26.7.06 in pursuance of the communication made by the Respondent No.5, Deputy Commissioner, Dhubri on 17.7.06 which is under challenge in this writ petition as aforesaid.

6. The pleadings are exchanged by the parties setting out the facts in support of their respective claims. The learned counsel appearing for Respondent Nos. 1, 2, 3, 4 and 6 and Respondent Nos.7 and 8 also produced the record of the case.

7. The firm foundation of facts pleaded in the writ petition rests on the following points viz:

a) Government Notification No.IWT-12/2002/132 dated 18.6.03 issued by the Principal Secretary to the Government of Assam, Transport Department, empowering the Transport Department as well as the Director of IWT to be the sole authority in regard to control and management of Ferries in the State of Assam. Apart from the authority as indicated above, no department of the Government of Assam/ Authorities/Panchayat/Zilla Parishad should be allowed to control and do management of ferry in the State of Assam.

b) The jurisdiction of control and management being vested in the IWT, the settlement made by Agamoni Anchalik Panchayat in favour of respondent No.9 is without jurisdiction and nullity and the writ court should come in aid to remove the illegality committed by the Anchalik Panchayat being beyond the purview of jurisdiction in settling the Ferry Ghat in favour of the Respondent No.9.

c) The Simlabari Parghat Commercial Cargo cum Passengers Service having been settled at an amount of Rs.18,000/- for which a lease deed was executed after depositing the said amount and the possession having been handed over to the writ petitioner, the cancellation of the same without affording any opportunity and without serving any show cause notice demands interference having an effect of civil consequences and fair play in action demands that the writ court should step in aid of the writ petitioner in order to subserve the cause of justice.

d) Exercise of power relating to the settlement of Ferry Ghat under Section 7(A) (Assam amendment) of the Northern India Ferries Act, 1878 (for short Act 1878), the State Government has been empowered to hand over the management of certain ferries to the Panchayats and in absence of such direction of the State Government the jurisdiction rests on the IWT, Government of Assam and as there is no such direction the Anchalik Panchayat has no jurisdiction to settle the parghat in favour of the Respondent No.9, though under Section 106 of the Assam Panchayat Act, 1994, the Anchalik Panchayat is empowered to give settlement to all public ferries other than the Government ferries and therefore, the reference is made to the provision of the Ferries Act and conjoint reading of Section 4 and 6 of the Ferries Act would show that all public ferries are Government ferries except those ferries covered by Section 7(A) of the Act, 1878 as indicated above and in absence of such direction by the State Government the Anchalik Panchayat has no jurisdiction to settle the ferry in question and as such, the settlement so made by the Anchalik Panchayat deserves to be interfered with in exercise of power under article 226 of the Constitution of India.

8. In support of the contentions so raised the learned counsel appe

aring for the writ petitioner has referred to the following decision-

- i) AIR 1967 SC 1269, (State of Orissa vs- Dr. (Miss) Binapani Devi and others).
- ii) (1998) 8 SCC 194, (Basudeo Tiwari vs- Sido Kanhu University and others).

9. Learned counsel appearing for the Respondent No.4, Director IWT, supporting the argument of the writ petitioner has urged that in view of notification dated 18.6.03 the Transport Department, Government of Assam, as well as IWT have been empowered exclusively to settle and management of ferries and the refore urged that the settlement made by other than two departments as indicated above shall be treated as without jurisdiction and is a nullity and the writ court shall exercise its discretion by setting aside the impugned order dated 26.7.06.

10. Per contra, the counsel appearing for the Respondent No.8, Executive Officer, Agamoni Anchalik Panchayat has contended that prior to 1993 the said Panchayat has been settling the Simlabari Parghat alongwith other ghats, ghat s, bills etc. in accordance with the provisions of Assam Panchayat Act. The Agamoni Anchalik Panchayat, in the instant case, had invited tender for all ghats, bills etc. which falls under the jurisdiction of the said Panchayat and accordingly five tenderers submitted their tenders. The Anchalik Panchayat had prepared a comparative statement and the Standing Committee decided to settle the parghat in question with the highest bidder, and collected the amount of Rs.99,999.99/- and therefore, the settlement made by the IWT in favour of the writ petitioner is illegal and the settlement so made in favour of the writ petitioner was taken up with the Deputy Commissioner, Dhubri, who in turn has acted fairly and conveyed the decision of the Agamoni Anchalik Panchayat to the Director, IWT and in consequence thereof the settlement has been cancelled which thus do not require to be interfered with being violative of Article 14 of the Constitution of India.

11. Countering the argument advanced by the learned counsel appearing on behalf of the writ petitioner, the learned counsel appearing for the Respondent No.9 has urged that the facts pleaded by the writ petitioner would show that entire pleadings of the writ petition rest on office memorandum dated 18.6.03 whereby and whereupon the power of settlement of ferries and jurisdiction was given to the Transport Department and IWT. The said office memorandum dated 18.6.03 came under challenge before this Court being WP(C) No.7945/03 and a batch of writ petitions. The said writ petitions were disposed of vide judgment and order dated 17.11.04. While quashing the office memorandum dated 18.6.03, this Court hold that, the statutory provisions of the Assam Panchayat Act, 1994 cannot be over ridden by the office memorandum dated 18.6.03 and as such, the exclusive jurisdiction empowering the Transport Department, Government of Assam and IWT Department to settle the ferry is arbitrary and illegal and against which no appeal has been preferred and as such, the said decision has attained its finality and therefore, urged that the settlement made in favour of the writ petitioner is ex-facie illegal and do not require to be interfered with, more so, when the settlement in favour of the respondent No.9 has been made after due tender process.

12. On a query made by this Court to the learned Sr. Govt. Advocate, Assam as well as standing counsel, Transport Department relating to the judgment and order dated 17.11.04 passed in WP(C) No.7945/03 and a batch of writ petitions and as to whether any writ appeal is pending against the aforesaid judgment rendered by the learned Single Judge, the answer is obviously no, as contended by the learned counsel appearing for the Respondent No.7, Agamoni Anchalik Panchayat and Respondent No.9. That being the position the argument advanced relating to jurisdiction of the Transport and IWT Department vis- -vis the various provisions of Act 1878 empowering exclusively the departments to settle the ferries fails. The new plea sought to be put forward on behalf of the writ petitioner, in the written submissions, is a plea which has to be established on the facts to be

e proved and in absence of relevant pleadings cannot be upheld. The facts as referred have not been disclosed in the writ petition. This Court therefore do not find any merit in the new contention sought to be put forward in absence of pleadings in the writ petition and this Court has no hesitation to overrule the contention.

13. The next question raises on behalf of the writ petitioner relates to breach of natural justice. Admittedly in the instant case, on the application of the writ petitioner dated 1.6.06 the Respondent No.4 has settled the Simla bari Parghat at an amount of Rs.18,000/- in purported exercise of power under the office memorandum dated 18.6.03, which power does not exist in view of judgment rendered by this Court on 17.11.04. The power must exist under the law and in absence of power, the settlement would be a nullity, more so, when State larges cannot be settled in violation of Article 14 of the Constitution of India which would emerge in the instant case. Rule of natural justice would not be applicable if it infringes Article 14. The principle of natural justice rests on that, if upon admitted or indisputable facts only one conclusion is possible, then in such case, the principle that breach of natural justice was in itself prejudice, would not apply. Even in cases where the facts are not at all admitted or beyond dispute, there is a considerable unanimity that the courts can, in exercise of their discretion refuse mandamus or certiorari or injunction even though natural justice is not followed. There is yet another line of cases where the statutory provisions requiring notice, a distinction is to be made between cases where the provision is intended for individual benefit and where a provision is intended to protect public interest. In the former case, it can be waived, while in the later case it cannot be waived. In the case in hand, and the facts averred do not require that a notice is required to be issued before any adverse order is passed and as such, the question of violation of principle of natural justice fails.

14. The case referred to by the learned counsel for the petitioner relating to violation of audi alteram partem rule, which is reported in AIR 1967 SC 1269 (supra) has no application in the instant case and the next decision referred to and reported in (1998) 8 SCC 194 (supra) relates to termination of service under Bihar State Universities Act, 1976 wherein it has been stated that the condition precedent for exercise of power under Section 35(3) of the Bihar Universities Act is that if an appointment has been made contrary to the Act, rules, statutes and regulations, it is incumbent on the part of the concerned authorities to arrive at a conclusion on an enquiry that the appointment has been made contrary to the statutory provisions. In absence of such finding the appointment cannot be cancelled and therefore hold that a notice is required to overcome the provisions of audi alteram partem rule, which is not the case in hand. The facts disclosed that on his prayer, the settlement has been made to the writ petitioner, which is in violation of Article 14 of the Constitution of India and as such, argument advanced is misplaced in the facts and circumstances of the case and this Court is not inclined to exercise the discretion by issuing a writ in the nature of Mandamus and/or Certiorari in the instant case.

15. In view of the aforesaid discussion, there is no merit in the writ petition and the same is liable to be dismissed, which I hereby do.

16. The writ petition is accordingly dismissed. However, parties are left to bear their own cost.